

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. The petitioner has a history of drug abuse and treatment that was known to her Reach Up case manager. There is no evidence or allegation that the Department had no basis to consider this to be a significant barrier to the

petitioner's prospects for sustained employment and self-support.

3. On December 17, 2007 the petitioner entered into a Family Development Plan (FDP) with her case manager, the key feature of which was for the petitioner to begin working 40 hours per week at a Community Service Program (CSP). The FDP made no mention of the petitioner's drug problems or any other physical or mental health issues.

4. Following a failure by the petitioner to report to this job, the case manager scheduled a conciliation meeting with the petitioner on December 31, 2007. The petitioner attended this meeting, and entered into a "Conciliation Resolution" to begin working 40 hours per week at the CSP job site. Again, there was no mention of the petitioner's drug problems.

5. The Department represents that when the petitioner did not report for work as agreed in her conciliation the case manager called her on January 2, 2008, at which time the Department alleges that the petitioner advised her case manager that she would rather be sanctioned than work at that placement.

6. In January 2008 the Department notified the petitioner that her RUFA grant would be reduced by \$75

beginning February 1, 2008 as a sanction for her failure to comply with Reach Up requirements.

7. The petitioner appealed this decision to the district office on February 12, 2008. At around that same time the petitioner reported that her husband had recently had an increase in his hours of employment. Based on this increased income, the Department closed the petitioner's RUFA grant effective March 1, 2008.

8. Hearings in this matter were held on March 24 and May 8, 2008. The petitioner stated at those times that she did not dispute the closure of her grant in March. Her dispute is whether her grant for February should have been subject to the \$75 sanction. The Department represented that the petitioner had not specifically raised her substance abuse problems and treatment when she entered into her FDP and conciliation agreements in December. The petitioner disputed this, but the Department agreed to consider retroactively any medical evidence the petitioner could submit regarding her medical or emotional condition at that time.

9. The petitioner subsequently submitted a report from her "addiction clinician" (an M.Ed.) who stated that she believes that the petitioner "was too emotionally volatile to

work around 12/31/07". However, as a "caveat", the clinician stated that she was not trained or qualified in treating "psychological disorders".

10. On May 20, 2008 the Department notified the petitioner and the Board that it did not consider the above statement to be a sufficient basis to reverse its decision in the matter.

ORDER

The Department's decision is reversed.

REASONS

Included in the "types of noncompliance" in the Reach Up regulations is the "failure or refusal to . . . attend or participate fully in (Reach Up) activities . . . (or) show up for work." W.A.M. § 2370.1. The oral declaration of an individual that she will not comply with Reach Up directives is considered an "overt refusal" to comply with the program. W.A.M. § 2370.12.

It appears that the Department would have the Board's analysis of this case begin and end with the above provisions. However, as the Board recently held in Fair Hearing No. 21,221, consideration of a participant's compliance with Reach Up activities does not exist in a

vacuum. A reiteration of the Board's ruling in that case is apropos.

As the Board noted in that case, the Legislature set out the following purposes in 33 V.S.A. § 1102(a):

(1) to assist families, recognizing individual and unique characteristics, to obtain the opportunities and skills necessary for self-sufficiency.

(2) To encourage economic independence by removing barriers and disincentives to work and providing positive incentives to work.

. . .

(6) To protect children by providing for their immediate basic needs, including food, housing and clothing.

. . .

See W.A.M. § 2200.

To ensure that the goals of the Reach Up program are met, Vermont uses a case management system designed to assess a recipient's abilities, identify barriers impeding an recipient's ability to become self-sufficient, and provide help in the implementation of a family development plan (FDP). 33 V.S.A. § 1106, W.A.M. §§ 2340 (participation linked to the applicant's needs and abilities) and 2350. Further, 33 V.S.A. § 1102(b)(2) states that that a critical element to such a program includes:

Cooperative and realistic goal setting, coupled with individualized case management that addresses each individual's situations and barriers to self sufficiency.

Identifying barriers is particularly important. Barrier is defined in 33 V.S.A. § 1101(5) as follows:

"Barrier" means any physical, emotional, or mental condition, any lack of an educational, vocational, or other skill or ability, and any lack of transportation, child care, housing, medical assistance or other services or resources, domestic violence circumstances, caretaker responsibilities, or other conditions or circumstances that prevent an individual from engaging in employment or other work activity. (emphasis added)

W.A.M. § 2341(5).

Surely, the petitioner's drug addiction, which was known to her case manager, should have merited *mention*, if not been the focus, in any FDP that can be deemed to have been developed in accord with the above provisions. Drug addiction certainly added a layer of complexity to petitioner's case and at a minimum should have been expressly considered in her FDP. See W.A.M. § 2361.3. However, there is no claim by the Department (which bears the burden of proof in this matter) or indication that such consideration occurred.

The regulations allow the Department to seek a sanction when a recipient has not complied with the terms of his/her FDP. Sanctions are an appropriate response if the recipient

does not have good cause for noncompliance. 33 V.S.A. § 1112(a), W.A.M. § 2370.1. Good Cause is defined at W.A.M. § 2370.3 as:

Circumstances beyond the control of the participant may constitute good cause for an individual's noncompliance.

Examples of good cause are found at W.A.M. § 2370.32 and they clearly include and contemplate medical and emotional problems. Under the regulations, the case manager has a responsibility to make a good cause determination. W.A.M. § 2370.2 states:

The case manager shall make a good-faith effort to contact the individual to discuss the act or pattern of noncompliance with the individual. The individual will provide sufficient documentation to substantiate a claim of good cause. . . The case manager shall complete the good cause determination within ten days of becoming aware of the individual's noncompliance.

In this case, although it appears that the petitioner's case manager called the petitioner when she did not show up at the CSP worksite, there is no claim or indication that she made any serious effort to give the petitioner the opportunity to document a good cause claim. It appears she simply took the petitioner's alleged willingness to accept a sanction at face value. The petitioner has now documented that it was likely that she was under considerable emotional distress at the time in question. By failing to take the

petitioner's medical condition into account either in the FDP or in consideration of good cause, the Department's decision to sanction the petitioner is flawed.

The Board has repeatedly held that RUFA is a remedial program, not a punitive program. Before imposing a sanction, it is important that the Department has fulfilled its obligations. As stated in Fair Hearing No. 21,221 (citing Fair Hearing No. 12,720):

[i]n sanctioning those mandatory participants who do refuse to participate—an act that has severe consequences for that individual's entire family—the Department must comply with the strict letter of the regulations. In this case it did not do so.

(See also Fair Hearing No. 20,824.)

Based on the foregoing, the Department's decision to sanction petitioner for the month of February 2008 must be reversed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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